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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUIS ACEVEDO,

Plaintiff,

vs.

SUNNOVA ENERGY  
CORPORATION; and DOES 1  
through 20, inclusive,

Defendants.

**Case No. 5:23-cv-02436-MRA-DTB**

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT SUNNOVA ENERGY  
CORPORATION'S MOTION TO  
DISMISS FIRST AMENDED  
COMPLAINT**

Hon. Mónica Ramírez Almadani

Hearing Date: May 16, 2024  
Time: 1:30 p.m.

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1 **I. INTRODUCTION**

2 The exponential growth of the solar energy industry has, unfortunately,  
3 resulted in a near-equally rapid growth in fraud. Large consumer-focused solar  
4 fintech companies like Defendant Sunnova Energy Corporation (“Sunnova”)  
5 partner with door-to-door solar panel sales and installation companies to rapidly  
6 close “sales” and trap consumers into expensive, multi-decade power purchase  
7 agreements (“PPAs”) from Sunnova based on false promises, sleight-of-hand sales  
8 tactics, and—as in this case—outright forgery.

9 Plaintiff Luis Acevedo and his husband own their home together. In 2021, a  
10 door-to-door salesperson acting as an agent for Sunnova came to Plaintiff’s home  
11 unannounced offering solar panels. The agent lied to Plaintiff and told him that  
12 solar panels could be affixed to his home for free. Sunnova’s agent used a fake  
13 email address to which Plaintiff had no access, and used a false birth date, false  
14 phone number, and incorrect address to enter Plaintiff into a 25-year PPA totaling  
15 over \$25,000. Sunnova continues to harass Plaintiff with debt collection calls for  
16 payments on a debt that he does not owe pursuant to a PPA to which he never  
17 agreed.

18 Sunnova now moves to dismiss each of Plaintiff’s claims, disclaiming any  
19 and all liability for its actions preceding and following the forgery of Plaintiff’s  
20 signature on the PPA. Most of Sunnova’s arguments center on Sunnova’s refusal to  
21 recognize its responsibility for the actions of its agents—the Sunnova-authorized  
22 door-to-door salesperson who went to Plaintiff’s home to attempt to sell him solar  
23 panels through Sunnova, arranged an unauthorized and forged PPA, and affixed  
24 solar panels on Plaintiff’s roof that do not work.

25 Sunnova’s arguments fail on two bases. First, Sunnova is liable for its own  
26 acts, including attempting to enforce and collect on a PPA that was void *ab initio*  
27 and obtaining Plaintiff’s credit report for an impermissible purpose. Second,  
28 Sunnova is directly liable for the conduct of its agents, including the Sunnova-

1 authorized salesperson who went to Plaintiff's door. Sunnova at every instance has  
2 ratified its agents' conduct, including by continuing to attempt to enforce the  
3 forged PPA to this day.

4 The rest of Sunnova's arguments misconstrue Plaintiff's First Amended  
5 Complaint ("FAC") or, in places, flatly contradict Plaintiff's allegations. On a Rule  
6 12(b)(6) motion, Plaintiff's allegations must be taken as true. For the reasons stated  
7 below, the Court should deny Sunnova's motion to dismiss.

## 8 **II. FACTUAL ALLEGATIONS**

9 The following facts are alleged in the Complaint and must be taken as true  
10 for the purposes of this motion.

### 11 **A. Sunnova's Business Model Incentivizes Fraud**

12 Sunnova is a consumer "green" energy company that purports to provide a  
13 wide range of services including direct sales of solar panels, batteries, electric  
14 vehicle charging stations, and generators. It is also a "fintech" lender and/or loan  
15 broker that has developed and administers a paperless lending platform that relies  
16 on third-party agents selling solar panels and other energy products while  
17 providing indirect loans to finance the purchase and installation of those products.  
18 In addition to its indirect financing for the sale of solar panels, Sunnova offers  
19 leases and PPAs whereby Sunnova owns solar panel systems it affixes on  
20 consumers' roofs and consumers pay for the electricity generated thereby.

21 To expand its business, Sunnova designed, implemented, and oversees a  
22 program pursuant to which it enlists solar sales and installation contractors to  
23 partner with Sunnova by promising that by doing so they will "win more work,  
24 close more deals, and get paid faster."<sup>1</sup> Sunnova deputizes its partners and the sales  
25 agents of these partners with broad authority to arrange loans, leases, and PPAs on  
26 behalf of Sunnova. Sunnova also vests its partners and their sales agents with the  
27 authority to obtain nonpublic Personally Identifiable Information ("PII") from  
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<sup>1</sup> <https://www.sunnova.com/dealers>, last visited March 12, 2024.

1 consumers and to submit loan and PPA applications on their behalf. Sunnova  
2 deputizes its partners and their salespersons with significant authority to initiate  
3 loan applications and PPAs and finalize contracts using Sunnova forms on  
4 Sunnova's online, paperless system, on behalf of Sunnova. Sunnova retains the  
5 right to control its partners' conduct including by, among other things,  
6 (1) requiring sales agents to use specific software, applications, and technology  
7 when engaging in transactions with consumers on Sunnova's behalf;  
8 (2) controlling the Sunnova products sales agents can offer (including how the  
9 products are presented to the consumer, the applicable terms and conditions, and  
10 the contractual documents that can be used); (3) controlling marketing and sales  
11 tactics; (4) retaining the right to discipline the partner and its sales agents for  
12 violating policies and procedures set by Sunnova; (5) requiring all sales agents  
13 who offer contracts using Sunnova forms to be registered with the Contractor State  
14 License Board ("CSLB") as being employed by Sunnova; and (6) retaining the  
15 right to terminate partners and/or their sales agents from working with Sunnova.  
16 Sunnova offers its partners immediate, on-the-spot approval of the loan or PPA  
17 applications that they submit through an electronic, paperless process. Plaintiff  
18 refers to this scheme as the "Sunnova Program" or the "Program."

19 While Sunnova created and manages the Sunnova Program and retains  
20 control over all aspects of the Program, there are little to no effective safeguards in  
21 the Program to protect consumers. As a result, Sunnova places consumers into  
22 loans and PPAs they had no opportunity to review. Thus, the Sunnova Program  
23 enables and facilitates Sunnova and its partners to exploit vulnerable consumers,  
24 saddling unwitting consumers with tens of thousands of dollars in debt they never  
25 agreed to. The Sunnova Program's paperless system, focus on speed, and financial  
26 incentives allow partners to close sales transactions, lock customers into financing,  
27 and receive immediate payment through the Sunnova Program regardless of  
28 whether the contracts are forged.



1       Regardless of whether Sunnova actually exercises its rights to control its  
2 partners' activity, Sunnova nonetheless ratifies its partners' misconduct by, among  
3 other things, enforcing contracts that have been fraudulently executed, failing to  
4 investigate consumer's complaints of fraud, and failing to cancel loan agreements  
5 and PPAs that have been procured by fraud.

6       **B.     Sunnova Defrauded and Victimized Plaintiff**

7       Plaintiff and his husband Bill are proud homeowners. In 2021, a door-to-  
8 door salesperson named Mostafa Shaheen showed up at Plaintiff's home  
9 unannounced offering solar panels. Mostafa was acting as an agent of Sunnova  
10 who, unbeknownst to Plaintiff, was operating through its contractor/installer  
11 partner Kuubix and was required by law to be registered with the CSLB to  
12 Sunnova. Although Mostafa did not tell Plaintiff that he was with either Kuubix or  
13 Sunnova, Sunnova had vested Kuubix and Mostafa with authority to operate on  
14 behalf of Sunnova in all respects regarding this transaction. Sunnova since ratified  
15 all actions of Mostafa by refusing to investigate Plaintiff's complaints and  
16 continuing to hold Plaintiff liable on a PPA he never signed or saw.

17       During repeated visits over the course of many months, Mostafa told  
18 Plaintiff and his husband that he was offering a free government program to  
19 qualifying homeowners that involved solar panels. Plaintiff and his husband did  
20 not know what company, if any, Mostafa was representing. Plaintiff and his  
21 husband were initially dubious that the solar panels would, in fact, be free. But  
22 every time they pressed Mostafa about whether they would be charged, Mostafa  
23 assured them that what he was offering was, in fact, a government program and  
24 that everything would be free of charge. Mostafa gained Plaintiff's trust over the  
25 course of these visits.

26       On one of Mostafa's visits, he explained that Plaintiff would need to perform  
27 a "detach and reset" of the garage roof prior to installing the solar panels and that,  
28 as with the solar panel installation and materials, this would be done free of charge.



1 Mostafa explained that after the panels were installed, Plaintiff and his husband  
2 would only be paying a cheaper rate for electricity to Edison for the electricity  
3 used in excess of what was provided by the panels.

4 In a text exchange, Mostafa wrote that “[t]he solar and roof will be  
5 noncharged [*sic*] and youll [*sic*] just pay a cheaper rate for the power. Plaintiff  
6 again pressed Mostafa, asking, “no upfront costs or down the line?” and “Free to  
7 us”? Mostafa responded, “None whats so [*sic*] ever” and “all thanks to the  
8 government and californias [*sic*] solar initiative.” Plaintiff and his husband  
9 believed Mostafa and relied on his representations that the panels would be free.

10 Mostafa never provided Plaintiff or his husband with a paper or electronic  
11 contract or agreement. Mostafa asked for Plaintiff’s email address, and Plaintiff  
12 gave Mostafa his correct email address. But, Mostafa never offered Plaintiff any  
13 kind of information or documentation of any type. Plaintiff never signed any  
14 document, electronic or hard copy, related to the solar panels except for a  
15 municipal permit related to the “detach and reset” work on the garage roof.  
16 Plaintiff did not authorize Mostafa or Sunnova to run Plaintiff’s credit at any time.

17 Around August or September of 2022, Plaintiff and his husband found  
18 permits at their home for work to be performed on their garage roof. Plaintiff’s  
19 husband signed the permit, which is the only document either Plaintiff or his  
20 husband saw or signed throughout this entire process. About one week later, a crew  
21 arrived to install the solar panels when neither Plaintiff nor his husband were  
22 home. Based on Mostafa’s repeated representations that the panels would be free  
23 and were a part of a government program, Plaintiff did not believe there would be  
24 any contract to sign and was not suspicious of the installation.

25 Though the panels initially worked, they stopped functioning in February  
26 2023. Plaintiff’s husband contacted Mostafa for repairs, and Mostafa told  
27 Plaintiff’s husband to contact Kuubix. This was the first Plaintiff or his husband  
28 had ever heard of Kuubix. When Plaintiff’s husband called Kuubix, he was told to

1 contact Sunnova to get a work order. This was the first that Plaintiff or his husband  
2 had ever heard of Sunnova.

3       Thereafter, Plaintiff's husband called Sunnova. In a subsequent call, he was  
4 told for the first time of the alleged existence of a contract between Plaintiff and  
5 Sunnova for the solar panels. In order to access Plaintiff's account, the Sunnova  
6 representative asked for personal information including home address, email  
7 address, phone number, and birthdate. Sunnova was unable to verify the address of  
8 Plaintiff's home, his personal phone number, birth date, and email address with  
9 Sunnova because it did not match the information that Sunnova had for the alleged  
10 account. This is because the personal information on the fraudulent PPA was false.

11       Even though none of Plaintiff's personal information other than his name  
12 matched the account that had been opened for him, Sunnova demanded that  
13 Plaintiff make payments on the alleged PPA. When informed of the amounts due,  
14 Plaintiff tried to cancel any alleged contract, which Sunnova refused to do. When  
15 Plaintiff and his husband asked for a copy of the contract, Sunnova would not  
16 provide it.

17       Finally, on June 22, 2023, Plaintiff and his husband for the first time  
18 received a copy of the alleged PPA. In the alleged PPA, Plaintiff saw what  
19 Sunnova was falsely claiming he signed – a 25-year PPA totaling over \$25,000. He  
20 also received a copy of an alleged “PPA Amendment” that was allegedly signed  
21 approximately three weeks after the alleged PPA.

22       The alleged PPA contains inaccurate information about Plaintiff. His alleged  
23 email address is incorrect. He has never had access to the email address listed on  
24 the alleged PPA. Though the alleged PPA appears to be signed using DocuSign,  
25 Plaintiff could not have signed it because he did not have access to the email  
26 address allegedly associated with him.

27       Similarly, the “PPA Amendment” contains inaccurate information. The  
28 homeowner address listed for Plaintiff on the “PPA Amendment” is false. The

1 “PPA Amendment” does not contain any email address, let alone a fake email  
2 address.

3 Upon information and belief, the “homeowner name and address” listed on  
4 the PPA Amendment belongs to a different “Luis Acevedo.” The alleged PPA  
5 Amendment lists an address in Corona, CA. A Google search of the address listed  
6 on the “PPA Amendment” indicates that another individual named “Luis Acevedo”  
7 lives at that address. Plaintiff lives in Moreno Valley, CA. The addresses are  
8 approximately 26 miles away from one another.

9 Furthermore, both the alleged PPA and the PPA Amendment list a Home  
10 Improvement Salesperson named “Daniel Lee.” Plaintiff had only ever  
11 communicated with Mostafa Shaheen. Plaintiff had never heard of a “Daniel Lee”  
12 in relation to the solar panels.

13 The monthly payments in the alleged PPA with Sunnova are \$116.98 for the  
14 first year of the PPA with the monthly cost increasing to an unspecified amount for  
15 the remaining 24 years. Mostafa Shaheen repeatedly promised Plaintiff that the  
16 cost of the solar panels would be zero. When Plaintiff discovered there was a  
17 fraudulent PPA and PPA Amendment stating he owed the above-referenced  
18 amounts, in addition to a Southern California Edison bill, he immediately again  
19 tried to cancel any and all alleged PPAs, including by certified mail, return receipt  
20 requested, on October 10, 2023. Despite its fraudulent nature, Sunnova denied  
21 Plaintiff’s cancellation attempt and has continued to refuse to rescind any alleged  
22 PPA or contract up to the present.

23 Plaintiff never consented to the use of electronic records to receive all  
24 disclosures he was entitled to receive under the law, much less in a manner  
25 reasonably demonstrating that he could access the disclosures in an electronic  
26 form. Further, Plaintiff did not and could not have intended to sign any agreement  
27 with Sunnova electronically, since he never knew about the Sunnova PPA or PPA  
28 Amendment.

1 Plaintiff never signed any documents electronically. Plaintiff has never seen  
2 nor used the email address listed for him on the original alleged PPA. Nobody in  
3 Plaintiff's family had ever seen this email address prior to the alleged Sunnova  
4 PPA being received for the first time in June 2023. Upon information and belief,  
5 this email address was fraudulently created and used by Sunnova and its agents to  
6 fraudulently affix Plaintiff's signature onto a PPA and PPA Amendment for which  
7 he never agreed and never wanted.

8 Plaintiff also attempted to contact Kuubix and cancel any and all alleged  
9 contract and/or PPA. However, Kuubix is now permanently out of business.

10 Plaintiff never signed any type of contract with Sunnova or with Kuubix.  
11 Nonetheless, Sunnova relies upon forged electronic signatures coming from an  
12 email address to which Plaintiff does not have and never had access to contend that  
13 he is contractually obligated to make monthly payments over the next 25 years to  
14 pay off a PPA he did not agree to.

15 Sunnova knew, or should have known, that it and its agents and  
16 representatives' conduct was likely to cause harm to Plaintiff.

17 Sunnova's actions have had a negative effect on Plaintiff and have caused  
18 him to suffer non-economic damages including emotional distress, stress, anxiety,  
19 and loss of enjoyment of life.

### 20 **III. LEGAL STANDARD FOR RULE 12(B)(6) MOTIONS**

21 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the  
22 claims alleged in the complaint. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d  
23 1480, 1484 (9th Cir. 1995). When reviewing a Rule 12(b)(6) motion, the court  
24 must "accept as true all of the factual allegations contained in the complaint,"  
25 *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citation omitted), and may dismiss a  
26 claim "only where there is no cognizable legal theory" or there is an absence of  
27 "sufficient factual matter to state a facially plausible claim to relief." *Shroyer v.*  
28 *New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citing

1 *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). A claim has facial plausibility  
2 when a plaintiff “pleads factual content that allows the court to draw the reasonable  
3 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S.  
4 at 678 (citation omitted). Even where a complaint is dismissed under Rule  
5 12(b)(6), “a district court should grant leave to amend . . . unless it determines that  
6 the pleading could not possibly be cured by the allegation of other facts.” *Lopez v.*  
7 *Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

#### 8 **IV. ARGUMENT**

9 Most of Sunnova’s arguments rely on its position that it is not liable for the  
10 conduct of its partner or its salespersons who are selling Sunnova products. To the  
11 contrary, Sunnova is directly liable for the conduct of its agents, including its  
12 partner Kuubix and its salespersons. To the extent that Sunnova’s arguments attack  
13 Plaintiff’s agency allegations, those arguments should be disregarded. The issue of  
14 agency is heavily fact-dependent and thus not suitable for resolution on a motion to  
15 dismiss. *Dantzler v. Harrison*, 2018 WL 3198453, at \*4 (C.D. Cal. June 25, 2018)  
16 (“[T]he question of agency should be submitted to the jury unless the factual  
17 record is utterly devoid of support for a finding of agency.” (cleaned up)).

18 As most of Sunnova’s arguments fail because they are legally incorrect on  
19 the issues of agency, Plaintiff addresses those issues as a threshold matter.  
20 Sunnova’s remaining arguments against each of Plaintiff’s claims are unpersuasive  
21 and should similarly be disregarded.

#### 22 **A. Sunnova is Liable for the Actions of Kuubix and Its Salespersons**

23 Under California law,<sup>2</sup> “[a]n agent is one who represents another, called the  
24 principal, in dealings with third persons. Such representation is called agency.”  
25 Civ. Code §2295. An agency relationship may be created “and an authority may be  
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27 <sup>2</sup> The state law claims are governed by California agency law. *See In re ChinaCast Educ. Corp. Sec. Litig.*, 809 F.3d  
28 471, 476 n.4 (9th Cir. 2015) (“There is, of course, no federal common law of agency that governs claims brought  
under state law in federal court.). Sunnova’s arguments regarding Plaintiff’s only federal claim, under the FCRA, do  
not appear to attack Plaintiff’s agency allegations. Accordingly, Plaintiff applies California agency law.

1 conferred, by a precedent authorization or a subsequent ratification.” Civ. Code  
2 §2307. Plaintiff alleges sufficient facts that when proven will establish that  
3 Sunnova manifested assent to Kuubix and its salespersons to act on Sunnova’s  
4 behalf, thus creating an agency relationship. However, even if there were any  
5 question about the adequacy of those allegations, Plaintiff has more than  
6 adequately alleged that Sunnova ratified Kuubix and its salespersons’ conduct  
7 through failing to cancel (and continuing to attempt to collect on) the fraudulent  
8 PPA after receiving notice of the fraud and Plaintiff’s explicit request to cancel.

9 At times, Sunnova confuses a corporation’s direct liability with the principle  
10 of vicarious liability. *See, e.g.*, Mot. at 13–14 (citing cases applying respondeat  
11 superior theory of liability). Vicarious liability “means that the act or omission of  
12 one person . . . is imputed by operation of law to another,” regardless of fault.  
13 *Srithong v. Total Inv. Co.*, 23 Cal.App.4th 721, 726 (1994) (cleaned up); *see Miller*  
14 *v. Stouffer*, 9 Cal.App.4th 70, 84 (1992) (doctrine of respondeat superior is an  
15 example of vicarious liability). By contrast, a corporation is directly liable for the  
16 actions of its agents. *See Inter Mountain Mortg., Inc. v. Sulimen*, 78 Cal. App. 4th  
17 1434, 1440 (2000) (“Vicarious liability based on the tort doctrine of respondeat  
18 superior and direct liability based on the theory of actual or ostensible agency are  
19 different liability theories which cases do not always distinguish between.”)  
20 Sunnova is directly liable for the actions of the agents tasked with bringing it into  
21 legal relations with third parties like Plaintiff and which conduct Sunnova later  
22 ratifies.

### 23 **1. Authorization**

24 “The essential elements necessary to establish an agency relationship are  
25 manifestation of consent by one person to another that the other shall act on his or  
26 her behalf and subject to his or her control, and consent by the other so to act.”  
27 *Hoffmann v. Young*, 13 Cal.5th 1257, 1274 (2022) (cleaned up). The “basic notion”  
28 of an agency relationship “is that one entity, called the agent, represents another,

1 called the principal, in dealings with third parties.” *Unite Here Ret. Fund v. City of*  
2 *San Jose*, 2023 WL 5181633, at \*4 (N.D. Cal. Aug. 11, 2023) (applying California  
3 law); *see also* Witkin, Summary 11th Agency § 4 (2022) (“[A]n agent . . . acts for  
4 and in the place of the principal for the purpose of bringing the principal into legal  
5 relations with third persons.”).

6 Sunnova argues that Plaintiff insufficiently alleged that Sunnova had control  
7 over Kuubix. Mot. at 11. To the contrary, Plaintiff alleges in specific detail that  
8 Sunnova vests its partner solar sales and installation companies, such as Kuubix,  
9 with the authority to act for and in place of Sunnova to bring Sunnova into legal  
10 relations with third party consumers, who then become Sunnova customers. *See*  
11 FAC ¶¶14, 20–30. Sunnova deputizes its partners to sell customers solar panels  
12 and arrange financing for the purchase of the solar panels through Sunnova loans  
13 and PPAs. *Id.* ¶22. To procure this expedient financing, Sunnova vests its partners  
14 and their agents with authority to procure PII from consumers and to submit loan  
15 and PPA applications on their behalf. *Id.* ¶23. Sunnova offers its partners  
16 immediate, on-the-spot approval of the loan and PPA applications that they submit  
17 through an electronic, paperless process. *Id.* ¶24. Sunnova then owns the loans and  
18 PPAs and generates profits from the fees. *Id.* ¶25. Thus, Sunnova’s entire business  
19 model relies on its partner-contractors forming legal relationships with consumers  
20 on Sunnova’s behalf.

21 Sunnova primarily argues that its partners are not agents because Plaintiff  
22 did not adequately plead that Sunnova exercises control over the contractors who  
23 solicit PPAs on behalf of Sunnova.<sup>3</sup> Mot. at 10–11. To the contrary, the Complaint  
24 sets forth in detail how Sunnova controls every aspect of the sales process,

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25 <sup>3</sup> Sunnova also argues that Plaintiff’s contention in the original Complaint that Sunnova “exercises virtually no  
26 oversight” over its contractors contradicts the allegations in the FAC. Mot. at 11. This is incorrect. Plaintiff alleges  
27 that Sunnova established and facilitates a network of contractors, maintains control over how those contractors  
28 procure contracts on behalf of Sunnova, but fails to establish the requisite safeguards to protect consumers from  
predatory sales practices. Thus, Plaintiff’s prior contention that Sunnova failed to exercise oversight references  
Sunnova’s practice of maintaining a system that incentivizes fraud and other unfair business practices while  
disclaiming any responsibility.



1 including by: (1) requiring Kuubix sales agents to use specific software,  
2 applications, and technology when engaging in transactions with consumers on  
3 Sunnova's behalf; (2) controlling the Sunnova products Kuubix sales agents could  
4 offer, the terms and conditions of the products offered, the method of presentation  
5 of the products offered, and the contractual documents that could be utilized;  
6 (3) controlling the marketing and sales tactics of Kuubix and its sales agents;  
7 (4) retaining the right to discipline Kuubix and sales agents for violations of  
8 policies and procedures set by Sunnova; (5) requiring all sales agents who offer  
9 contracts using Sunnova forms, including those sales agents of Kuubix, to be  
10 registered with the Contractors State License Board as being employed by  
11 Sunnova; and (6) retaining the right to terminate Kuubix and/or Kuubix sales  
12 agents from the Sunnova Program. FAC ¶¶14, 26, 34. The ability to terminate  
13 Kuubix's services is a key aspect of the element of control. *Michelson v. Hamada*,  
14 29 Cal.App.4th 1566, 1580 (1994) ("The power of the principal to terminate the  
15 services of the agent gives him the means of controlling the agent's activities[.]").

16 Further, although Sunnova exercises actual control over the Sunnova  
17 Program, "[i]t is not essential that the right of control be exercised or that there be  
18 actual supervision of the work of the agent. The *existence* of the right of control  
19 and supervision establishes the existence of an agency relationship." *Malloy v.*  
20 *Fong*, 37 Cal.2d 356, 370 (1951) (emphasis added). Delegation from the principal  
21 to the agent is precisely the defining characteristic of an agency relationship. *See*  
22 *Unite Here Ret. Fund*, 2023 WL 5181633, at \*5. Plaintiff alleges that Sunnova  
23 delegated authority to Kuubix to procure PPAs on Sunnova's behalf. *See* FAC  
24 ¶¶28–36. Thus, it is unnecessary to allege that Sunnova actually supervises the  
25 day-to-day operations of its partner contractors. Further, Plaintiff alleges that  
26 Sunnova can terminate its relationships with its partners. *Id.* ¶34. The ability to  
27 terminate Kuubix's services is a key aspect of the element of control. *See*  
28 *Michelson*, 29 Cal.App.4th at 1580.

1 The cases Sunnova cites are inapposite. Mot. at 12–13. In many of the cases,  
2 the plaintiffs alleged at most bare conclusory statements about agency. *See, e.g.,*  
3 *Friedman v. Mercedes Benz USA LLC*, 2013 WL 8336127, at \*6 (C.D. Cal. June  
4 12, 2013) (“Plaintiffs have alleged no facts that MBUSA has any relationship with  
5 Keyes whatsoever.”). Here, by contrast, Plaintiff specifically alleges that Sunnova  
6 authorized Kuubix to act on its behalf and provides detailed supporting allegations  
7 in support of his agency contentions. *See* FAC. ¶¶12, 28–36. Other cases involve  
8 patently deficient agency allegations. *See Pluto Sama Holdings, Inc. v. Jagex*  
9 *Limited*, 2022 WL 1536590, at \*6 (C.D. Cal. Jan. 12, 2022) (granting motion to  
10 dismiss when plaintiff’s pleadings focused on the alleged *agent’s* control over the  
11 alleged *principal*).

12 Discovery will uncover more facts (and verify the alleged facts) establishing  
13 the agency relationship between Sunnova and Kuubix, including contracts that  
14 show the extent of control Sunnova exercises over Kuubix.

## 15 **2. Ratification**

16 On top of actual authorization, an agency relationship may also be created  
17 through ratification. Civ. Code §2307. Ratification is the “subsequent adoption by  
18 one claiming the benefits of an act, which without authority, another has  
19 voluntarily done while ostensibly acting as the agent of him who affirms the act  
20 and who had the power to confer authority.” *Reusche v. Cal. Pac. Title Ins. Co.*,  
21 231 Cal.App.2d 731, 737 (1965) (citing Civ. Code §§2310, 2312); *see also*  
22 *Rakestraw v. Rodrigues*, 8 Cal.3d 67, 73 (1972) (“Ratification is the voluntary  
23 election by a person to adopt in some manner as his own an act which was  
24 purportedly done on his behalf by another person, the effect of which, as to some  
25 or all persons, is to treat the act as if originally authorized by him.”).

26 Plaintiff alleges that Sunnova ratified the unlawful actions of Kuubix and its  
27 salespeople by treating the fraudulent PPA as valid and failing to cancel the  
28 agreement after Plaintiff gave Sunnova notice of the fraud. FAC ¶¶35, 43. Sunnova

1 refuses to acknowledge Plaintiff's lawful cancellation and has declined to take any  
2 corrective action. *Id.* ¶68. Sunnova continues to claim that Plaintiff is obligated on  
3 the PPAs and/or contracts that he never signed. *Id.* ¶69. "A principal cannot split  
4 an agency transaction and accept the benefits thereof without the burdens."  
5 *Reusche*, 231 Cal.App.2d at 737. Further, while "[o]rdinarily, the law requires that  
6 a principal be apprised of all the facts surrounding a transaction before he will be  
7 held to have ratified the unauthorized acts of an agent," that maxim does not apply  
8 where "ignorance of the facts arises from the principal's own failure to investigate  
9 and the circumstances are such as to put a reasonable man on inquiry." *Id.*<sup>4</sup> In such  
10 case, a principal "may be held to have ratified despite lack of full knowledge." *Id.*  
11 Here, Plaintiff alleges that Sunnova accepted and subsequently refused to cancel  
12 the PPA after being on notice of its fraudulent execution. Sunnova then attempted  
13 to collect on the fraudulent PPA from Plaintiff without investigating Plaintiff's  
14 complaints of fraud. This is sufficient to plead that Sunnova ratified Kuubix and its  
15 salespersons' conduct, creating an agency relationship.

16 Sunnova's case law is inapposite. *See* Mot. at 15. Several cases do not even  
17 contemplate agency liability, thereby rendering any ratification analysis  
18 inapplicable. *See, e.g., Bear River Sand & Gravel Corp. v. Placer Cnty.*, 118  
19 Cal.App.2d 684, 689–91 (1953) (involving a municipal contract by a public  
20 officer, which the court explicitly distinguishes from agency, that overreached the  
21 governmental office's statutory authority).

22 Sunnova cannot establish a network of partnerships all intended to create  
23 contractual relationships between itself and third parties while simultaneously  
24 disclaiming all responsibility for the manner in which those relationships are

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25 <sup>4</sup> Sunnova's own authority acknowledges this exception. *See Gallagher v. California Pac. Title*  
26 *& Tr. Co.*, 13 Cal. App. 2d 482, 493 (1936) ("As a general rule, in order that a ratification of an  
27 unauthorized act of an agent may be valid and binding it is essential that the principal have full  
28 knowledge at the time of the ratification of all material facts and circumstances relative to the  
unauthorized act or transaction ... *unless* the principal is wilfully, ignorant or purposely refrains  
from seeking information") (emphasis added).

1 formed. Sunnova's motion to dismiss should be denied to the extent that Sunnova  
2 relies on arguments disclaiming its agency relationship with Kuubix.

3 **B. Plaintiff's Claims Are Adequately Pleaded**

4 **1. Fraudulent Concealment**

5 Fraudulent concealment requires "(1) concealment or suppression of a  
6 material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3)  
7 the defendant intended to defraud the plaintiff by intentionally concealing or  
8 suppressing the fact; (4) the plaintiff was unaware of the fact and would not have  
9 acted as he or she did if he or she had known of the concealed or suppressed fact;  
10 and (5) plaintiff sustained damage as a result of the concealment or suppression of  
11 the fact." *Graham v. Bank of Am., N.A.*, 226 Cal.App.4th 594, 606 (2014).

12 Plaintiff alleges that Sunnova committed fraudulent concealment by  
13 concealing facts material to the alleged transaction between Plaintiff and Sunnova,  
14 including that (1) Sunnova and its agents were selling and/or otherwise marketing  
15 a Sunnova PPA; (2) Sunnova and its agents used fake information to complete a  
16 PPA in Plaintiff's name; and (3) Sunnova and its agents were placing Plaintiff in a  
17 25-year PPA. FAC ¶73. Plaintiff further alleges that Sunnova had a duty to  
18 disclose complete and accurate information to Plaintiff. *Id.* ¶75. Sunnova intended  
19 to defraud Plaintiff by intentionally concealing the material facts stated above, as  
20 evidenced by its use of a fake email address in Plaintiff's name and an incorrect  
21 homeowner address associated with an individual who shares Plaintiff's name. *Id.*  
22 ¶¶57, 58–59, 63. Plaintiff was unaware that Sunnova had entered him into a PPA  
23 and PPA Amendment or that he would owe Sunnova over \$25,000 over a period of  
24 25 years. *Id.* ¶56. Plaintiff would have acted differently if he had been apprised of  
25 the true circumstances, since he only permitted the installation of the solar panels  
26 by relying on the salesperson's word that the panels were free. *See id.* ¶¶45–49, 77.  
27 Plaintiff sustained damage because of Sunnova's fraudulent concealment,  
28 including the emotional distress he has suffered because of Sunnova's entire course

1 of conduct. *Id.* ¶¶71, 78.

2 Sunnova primarily argues that Plaintiff has only pleaded liability against  
3 Kuubix and/or its salespeople, not Sunnova directly. *See* Mot. at 9–10. As argued  
4 above, Plaintiff has adequately pleaded that Kuubix and its salespersons were  
5 agents of Sunnova and therefore Sunnova is directly liable for the conduct of its  
6 agents. *See supra*, Section IV.A. Further, the issue of agency is fact-dependent and  
7 should not be decided on a motion to dismiss.

8 Sunnova misleadingly argues that Plaintiff did not adequately plead  
9 “reliance” on any representation or omission by Sunnova. *See* Mot. at 9–10.  
10 Reliance in the context of a fraudulent concealment claim merely requires a  
11 showing that “had the omitted information been disclosed, one would have been  
12 aware of it and behaved differently.” *Daniel v. Ford Motor Co.*, 806 F.3d 1217,  
13 1225 (9th Cir. 2015) (quoting *Mirkin v. Wasserman*, 5 Cal.4th 1082 (1993)). Here,  
14 Plaintiff only permitted the installation of solar panels on his home because he did  
15 not know the true cost of the panels and he was not aware of the 25-year PPA for  
16 over \$25,000. FAC ¶¶45–49, 56. Plaintiff would have acted differently if he had  
17 known the real circumstances of the transaction. FAC ¶77; *Daniel*, 806 F.3d at  
18 1225 (“That one would have behaved differently can be presumed, or at least  
19 inferred, when the omission is material. . . . [such that] a reasonable consumer  
20 ‘would attach importance to its existence or nonexistence in determining his choice  
21 of action in the transaction in question.’” (citation omitted)). Thus, Plaintiff  
22 adequately pleaded reliance on Sunnova’s misrepresentations and omissions.

23 In sum, Sunnova’s arguments regarding Plaintiff’s fraudulent concealment  
24 claim fail because Plaintiff adequately pleaded liability against Sunnova based on  
25 its agency relationship with Kuubix.

## 26 **2. Negligence**

27 A plaintiff states a claim for negligence by pleading the existence of a legal  
28 duty, a breach of that duty, and resulting damages. *Brown v. USA Taekwondo*, 11

1 Cal.5th 204, 213 (2021). A duty exists if “the plaintiff’s interests are entitled to  
2 legal protection against the defendant’s conduct.” *Id.* In general, everyone has a  
3 duty “to exercise, in his or her activities, reasonable care for the safety of others.”  
4 *Cabral v. Ralphs Grocery Co.*, 51 Cal.4th 764, 768 (2011); Civ. Code §1714(a).

5 Plaintiff alleges that Sunnova had a duty to disclose complete and accurate  
6 information to Plaintiff. FAC ¶75. Plaintiff further alleges that Sunnova breached  
7 its duty by concealing the facts that (1) Sunnova and its agents were selling and/or  
8 otherwise marketing a Sunnova PPA; (2) Sunnova and its agents fabricated  
9 personal identifying information for Plaintiff to submit a loan application and/or  
10 PPA application for Plaintiff; and (3) Sunnova and its agents were placing Plaintiff  
11 in a 25-year PPA. *Id.* ¶80. Plaintiff was damaged as a result. *Id.* ¶¶71, 81.

12 Sunnova’s arguments on Plaintiff’s negligence claim merely disclaim  
13 agency liability for Kuubix’s action. These arguments fail for the reasons stated  
14 above. *See supra*, Section IV.A. Thus, the Court should find Plaintiff’s negligence  
15 claim is adequately pleaded.

### 16 3. CLRA

17 The CLRA prohibits “unfair methods of competition and unfair or deceptive  
18 acts or practices undertaken by any person in a transaction intended to result or  
19 which results in the sale or lease of goods or services to any consumer.” Cal. Civ.  
20 Code §1770(a). “Conduct that is ‘likely to mislead a reasonable consumer’ violates  
21 the CLRA.” *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012)  
22 (quoting *Colgan v. Leatherman Tool Grp., Inc.*, 135 Cal.App.4th 663, 680 (2006)).  
23 Causation is a necessary element of a CLRA claim. *Hale v. Sharp Healthcare*, 183  
24 Cal.App.4th 1373, 1386 (2010). Plaintiff alleges that Sunnova violated the CLRA  
25 by, among other things, misrepresenting that the solar panels would be free (Civ.  
26 Code §1770(a)(13)) and concealing the existence of the PPA Plaintiff did not sign  
27 (Civ. Code §1770(a)(14)). FAC ¶85.

28 Sunnova argues that Plaintiff has not pleaded that he “detrimentally relied on



1 anything that Sunnova said or did.” Mot. at 18. While not entirely clear, this  
2 argument appears to be based on two propositions: (1) that Sunnova is not liable  
3 for whatever misrepresentations Kuubix and its salespersons made to Plaintiff and  
4 that (2) Plaintiff cannot plead reliance on facts that he did not know. With respect  
5 to the first proposition, Sunnova is liable for Kuubix’s misrepresentations and  
6 omissions because Kuubix was Sunnova’s agent for the purposes of the  
7 transaction. *See supra*, Section IV.A. As for the second, Plaintiff can plead reliance  
8 on an omission or concealment by alleging that he would have behaved differently  
9 if he had known the omitted facts. *See Daniel*, 806 F.3d at 1225. As explained  
10 above, Plaintiff permitted the installation of the solar panels in reliance on the false  
11 representation that the solar panels would be free and the omission that there was  
12 an expensive, 25-year PPA attached to the solar panels. *See supra*, Section IV.B.1.  
13 A court may also presume or infer that a plaintiff would have acted differently if  
14 the omission was “material.” *Daniel*, 806 F.3d at 1225. A reasonable consumer  
15 would consider a 25-year PPA for over \$20,000 material.

#### 16 **4. Fair Credit Reporting Act**

17 The federal Fair Credit Reporting Act (“FCRA”), 15 U.S.C. 1681, *et seq.*,  
18 was enacted to “ensure fair and accurate credit reporting, promote efficiency in the  
19 banking system, and protect consumer privacy.” *Dutta v. State Farm Mut. Auto.*  
20 *Ins. Co.*, 895 F.3d 1166, 1169 (9th Cir. 2018) (quoting *Safeco Ins. Co. of Am. v.*  
21 *Burr*, 551 U.S. 47, 52 (2007). “[T]he FCRA generally prohibits obtaining a credit  
22 report, 15 U.S.C. § 1681b(f), but then provides a numerous and diverse list of  
23 exceptions, 15 U.S.C. § 1681b(a).” *Nayab v. Cap. One Bank (USA), N.A.*, 942 F.3d  
24 480, 495 (9th Cir. 2019). Credit reports may be furnished under any of these  
25 provisions, “and no other.” 15 U.S.C. § 1681b(f)

26 The Ninth Circuit has held that “a consumer-plaintiff need allege only that  
27 her credit report was obtained for a purpose not authorized by the statute to survive  
28 a motion to dismiss.” *Nayab*, 942 F.3d at 487. A plaintiff satisfies their burden if



1 they allege “facts giving rise to a reasonable inference that the defendant obtained  
2 his or her credit report in violation of § 1681b(f)(1).”<sup>5</sup> *Id.* at 493. One way to do  
3 this is by “rul[ing] out many of the potential authorized purposes for obtaining a  
4 credit report.” *Id.* at 493; *see also Graham v. Sunnova Energy Int’l, Inc.*, 2024 WL  
5 871858, at \*8 (E.D. Cal. Feb. 28, 2024) (finding plaintiff satisfied its burden to  
6 plead that Sunnova violated the FCRA when “the allegations in the FAC are  
7 sufficient for the Court to reasonably infer Sunnova did not have a permissible  
8 purpose among the six identified under Section 1681b.”).

9 Sunnova’s sole argument is that Plaintiff did not adequately allege an  
10 impermissible purpose for requesting Plaintiff’s credit report. As a preliminary  
11 matter, Sunnova’s argument is based almost exclusively on pre-*Nayab* case law  
12 from other circuits and therefore applies an incorrect pleading burden. Sunnova is  
13 also factually incorrect. Plaintiff alleged that Sunnova’s agent came to his house  
14 unannounced offering solar panels, FAC ¶43, thereby supporting a reasonable  
15 inference that Sunnova did not run the report for employment purposes, to  
16 underwrite an insurance policy, to evaluate Plaintiff’s eligibility for a license, or in  
17 connection with a government-sponsored individually-billed travel charge card. 15  
18 U.S.C. § 1681b(B), (C), (D), (F); *see also Graham*, 2024 WL 871858 at \*8. It is  
19 also reasonable to infer that Plaintiff did not have an existing credit obligation,  
20 credit transaction or account with Sunnova, 15 U.S.C. § 1681b(A), (E), (F)(ii),  
21 because Plaintiff alleged that he had never heard of Sunnova until over a year after  
22 Sunnova accessed his consumer report. *See* FAC ¶52. Plaintiff further alleged that  
23 he did not initiate or intend to initiate a credit transaction with Sunnova, and he did  
24 not consent to the inquiry. *See* FAC ¶¶40, 50, 93. These facts reasonably imply that  
25 Sunnova did not have a legitimate business need for the transaction, 15 U.S.C.

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26  
27 <sup>5</sup> In fact, the *defendant* “has the burden of pleading it had an authorized purpose to acquire [the  
28 plaintiff’s] credit report.” *Nayab*, 942 F.3d at 495. Nowhere does Sunnova explain its  
permissible purpose for obtaining Plaintiff’s credit report, and in any case, that fact defense  
could not be considered on a motion to dismiss.

1 § 1681b(F)(i), because Plaintiff never agreed to open an account with Sunnova.  
2 Viewed together, these facts give rise to a reasonable inference that Sunnova  
3 obtained Plaintiff's report without a permissible purpose, thereby satisfying its  
4 pleading requirements. *Nayab*, 942 F.3d at 493.

## 5 **5. Rosenthal Act**

6 The California Legislature enacted the Rosenthal Act "to prohibit debt  
7 collectors from engaging in unfair or deceptive acts or practices in the collection of  
8 consumer debts and to require debtors to act fairly in entering into and honoring  
9 such debts." Civ. Code §1788.1(b). The Rosenthal Act incorporates 15 U.S.C.  
10 §§1692b to 1692j, inclusive, of the federal Fair Debt Collection Practices Act  
11 ("FDCPA") such that "a violation of the FDCPA is per se a violation of the  
12 Rosenthal Act." *Best v. Ocwen Loan Servicing, LLC*, 64 Cal.App.5th 568, 576  
13 (2021). The Rosenthal Act is "a remedial statute [that] should be interpreted  
14 broadly in order to effectuate its purpose." *Komarova v. Nat'l Credit Acceptance,*  
15 *Inc.*, 175 Cal.App.4th 324, 340 (2009).

16 The FDCPA makes it unlawful to "use any false, deceptive, or misleading  
17 representation or means in connection with the collection of any debt." 15 U.S.C.  
18 §1692e. This prohibition includes falsely representing "the character, amount, or  
19 legal status of any debt," 15 U.S.C. §1692e(2), the "threat to take any action that  
20 cannot legally be taken or that is not intended to be taken," 15 U.S.C. §1692e(5),  
21 and the "use of any false representation or deceptive means to collect or attempt to  
22 collect any debt," 15 U.S.C. §1692e(10). Together, these provisions prevent debt  
23 collectors from representing that a consumer owes a debt that they do not owe or  
24 taking any action to collect on debts that are not owed. The Rosenthal Act, through  
25 incorporation of the FDCPA, renders independently actionable Sunnova's unlawful  
26 attempts to collect a debt Plaintiff does not owe. *See* Civ. Code §1788.17.

27 Plaintiff alleges that Sunnova violated the Rosenthal Act by falsely  
28 representing that Plaintiff is obligated on a PPA that he never saw or signed and by

1 attempting to collect money on a debt he never owed. FAC ¶¶50, 66, 69, 102–03.  
2 Sunnova argues that the allegations in the FAC are too conclusory, citing  
3 *Townsend v. Chase Bank USA N.A.*, 2009 WL 426393, at \*2 (C.D. Cal. Feb. 15,  
4 2009), *aff’d*, 445 F. App’x 920 (9th Cir. 2011). However, in *Townsend*, the  
5 plaintiff was alleging that the debt collection calls “based on allegedly deceptive  
6 debt collection communications but did not include any specific information about  
7 those communications or why they were deceptive.” *Helber v. Nationwide Credit,*  
8 *Inc.*, 2010 WL 11595725, at \*2 (C.D. Cal. Mar. 4, 2010) (distinguishing  
9 *Townsend*). Here, by contrast, Plaintiff alleges violations of the Rosenthal Act’s  
10 prohibitions on collecting debts not owed. *See* FAC ¶104. For example, each of the  
11 calls to Plaintiff “misrepresented the character, amount, or legal status of the  
12 fraudulent account” because Sunnova incorrectly represented that Plaintiff owed  
13 anything at all. *Id.* ¶69. Plaintiff’s allegations that Sunnova attempted to collect a  
14 debt that was not owed because Plaintiff did not agree to any PPA with Sunnova  
15 are sufficient to put Sunnova “on notice of the basic facts underlying Plaintiff’s  
16 claims.” *Kruckenbergh v. McKellar Grp., LLC*, 2014 WL 4063285, at \*4 (S.D. Cal.  
17 Aug. 14, 2014).

## 18       **6. Home Solicitation Sales Act**

19       The HSSA was enacted “to protect consumers against the types of pressures  
20 that typically can arise when a salesman appears at a buyer’s home.” *Weatherall*  
21 *Aluminum Prod. Co. v. Scott*, 71 Cal.App.3d 245, 248 (1977). It applies to “any  
22 contract . . . for the sale, lease, or rental of goods or services or both, made at other  
23 than appropriate trade premises” for \$25 or more. Civ. Code §1689.5(a). The PPA  
24 constitutes a home solicitation sales contract because it is a contract for goods or  
25 services allegedly made at a consumer’s home. *See* Civ. Code §1689.5(a).

26       The HSSA offers safeguards to ensure that the inherent pressure of home  
27 solicitation sales is not coercive. A non-senior citizen buyer must be given both  
28 written and oral notice of the right to cancel the contract within three business days

1 after the buyer receives a signed and dated copy of the contract that complies with  
2 the HSSA. Civ. Code §1689.6(a)(2), §1689.7(f). The HSSA is a strict compliance  
3 statute, and if a seller fails to strictly comply with the mandates of the statute, the  
4 buyer retains the right to cancel the contract until the seller complies with the  
5 HSSA. Civ. Code §1689.7(c); *see Weatherall Aluminum Prod. Co.*, 71 Cal.App.3d  
6 at 249 (explaining that the strict compliance requirements of the HSSA were  
7 intended by the Legislature to send a message of “Caveat Vendor”).

8 Sunnova appears to conflate strict compliance with a requirement that  
9 Plaintiff plead Sunnova’s compliance (or lack thereof) with every element of the  
10 HSSA. Sunnova argues that Plaintiff has failed to state a claim under the HSSA  
11 because “Plaintiff does not allege the contracts he received did not have the  
12 requisite notice or that he attempted to cancel them within the five-day timeframe  
13 the statute requires.” Mot. at 24. Both arguments fail. First, whether the alleged  
14 contracts contained an HSSA-compliant notice is immaterial when, as here,  
15 Sunnova failed to strictly comply with other requirements of the HSSA. Sunnova  
16 has never provided Plaintiff with a fully executed contract as required by Civil  
17 Code §1689.6(a)(2). As to the cancellation timeframe, the HSSA explicitly permits  
18 the buyer to cancel any time before the seller complies with the HSSA’s strict  
19 statutory terms. Civ. Code §1689.7(g) (“Until the seller has complied with this  
20 section the buyer may cancel the home solicitation contract or offer.”). Sunnova  
21 has never complied with the HSSA—nor could it, as Plaintiff never signed a  
22 contract or PPA with Sunnova. Plaintiff was thus entitled to cancel at any time.

23 **7. Bus. & Prof. Code §7150**

24 Business and Professions Code §7159(d) requires that “A home  
25 improvement contract and any changes to the contract shall be in writing and  
26 signed by the parties to the contract prior to the commencement of work covered  
27 by the contract . . . .” That statute further requires that, “[b]efore any work is  
28 started, the contractor shall give the buyer a copy of the contract signed and dated

1 by both the contractor and the buyer.” Bus. & Prof. Code §7159(c)(3)(A). Sunnova  
2 violated these provisions because Plaintiff did not sign any contract, much less  
3 prior to commencement of the work. FAC ¶¶50–51, 63, 66.

4 Sunnova’s argument against this claim again relies wholly on its assertion  
5 that Kuubix is not its agent. *See* Mot. at 24–25. This argument fails for the reasons  
6 explained in detail above. *See supra*, Section IV.A.

## 7 **8. UCL**

8 The Unfair Competition Law proscribes any unlawful, unfair or fraudulent  
9 business act or practice. Bus. & Prof. Code §17200(a)(1). Conduct that violates  
10 any one of the three stated prongs will trigger liability under the UCL. By  
11 proscribing “any unlawful” business practice, the UCL borrows violations of other  
12 laws and treats them as unlawful practices that are independently actionable. *Cel-*  
13 *Tech Comms., Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.4th 163 (1999) , 180.  
14 Defendants’ violations of the statutes described above, including the CLRA,  
15 Rosenthal Act, HSSA, FCRA, and Bus. & Prof. Code §7150, violate the  
16 “unlawful” prong of the UCL. In addition to these explicit claims, Plaintiff also  
17 alleges that Sunnova violated the UCL through its violations of other predicate  
18 laws, including the Consumer Financial Protection Act (“CFPA”), 12 U.S.C.  
19 §§5531(a) and 5536(a)(1)(B). FAC ¶148.

20 Sunnova argues that Plaintiff did not adequately plead that it violated the  
21 CFPA. Mot. at 20. But its only argument on this point is based on its incorrect  
22 assertion that it is not liable for Kuubix’s conduct. This argument has been  
23 addressed exhaustively above. *See supra*, Section IV.A.

24 In sum, Plaintiff’s UCL claim is predicated on the numerous laws Sunnova  
25 violated by fraudulently executing a PPA in Plaintiff’s name and refusing to  
26 cancel the contract upon receiving notice of the fraud. The predicate laws include  
27 each statute under which Plaintiff brings a claim as well as the CFPA. Further,  
28 although Sunnova does not address this point in its brief, Plaintiff alleges that its

1 conduct also violates the “unfair” and “fraudulent” prongs of the UCL. Based on  
2 Sunnova’s numerous violations of the UCL, the Court should deny its motion to  
3 dismiss Plaintiff’s UCL claim.

4 **V. CONCLUSION**

5 For the reasons stated above, Plaintiff requests that the Court deny  
6 Sunnova’s motion to dismiss in its entirety. However, if the Court finds that any  
7 claims are insufficiently pleaded, Plaintiff requests leave to amend.

8 Dated: April 25, 2024

KEMNITZER, BARRON & KRIEG, LLP

9  
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